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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**Shelley Dusek;**

**Plaintiff,**

VS.

## **City of Coolidge, Arizona;**

Defendant.

Case No. \_\_\_\_\_

## COMPLAINT

**(Jury Trial Requested)**

Plaintiff, Shelley Dusek, (“Ms. Dusek” or “Plaintiff”), by and through her counsel undersigned, and for her Complaint, alleges as follows:

## **PARTIES AND JURISDICTION**

1. Defendant, the City of Coolidge, Arizona (the "City" or "Coolidge") is a city organized and operating under the color of state law as a political subdivision of the State of Arizona.

2. Coolidge maintains and operates the Coolidge Police Department (“Coolidge PD” or the “Department”) as its primary law enforcement agency.

3. Coolidge is the legally recognized employer of the individuals working in the Coolidge PD.

1       4. Coolidge provides the compensation and controls the terms and conditions  
2 of employment of the individuals working in the Coolidge PD.

3       5. At all times material hereto, Coolidge was acting through its agents,  
4 management and employees, and is therefore liable for their actions under the doctrine of  
5 respondeat superior.

6       6. Ms. Dusek is a trained and certified law enforcement officer who began  
7 working as a patrol officer for Coolidge PD on or about December 11, 2017.

8       7. Ms. Dusek successfully completed her probationary period and became a  
9 classified employee of Coolidge with all the rights and privileges inherent in holding such  
10 a position.

11       8. As a public employee, Ms. Dusek had a property interest in her job and was  
12 covered by an extensive set of detailed policies and procedures related to among other  
13 things discipline, termination, medical and administrative leave, light duty assignments,  
14 and due process rights.

15       9. As a certified law enforcement officer working for Coolidge PD, Ms. Dusek  
16 was covered by the Public Safety Personnel Retirement System (“PSPRS”), a state  
17 sponsored retirement and pension system.

18       10. On or about September 9, 2020, the employment of Ms. Dusek was  
19 wrongfully terminated in violation of various federal statutes.

20       11. At all times relevant to this action, Ms. Dusek resided within the jurisdiction  
21 of this Court.

22       12. The events giving rise to these causes of action occurred within the  
23 jurisdiction of this court.

24       13. Ms. Dusek complied with all statutory and administrative requirements and  
25 timely filed this lawsuit.

26       14. This action arises under the Americans with Disabilities Act, 42 U.S.C. §  
27 12101, et seq. (“ADA”), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.  
28

1 §2000e et seq. (“Title VII”) and violation of due process rights pursuant to 42 U.S.C. §  
2 1983.

3 15. At all times material, Ms. Dusek was a qualified individual and employee  
4 covered by the provisions and protections of the ADA, Title VII, and 42 U.S.C. § 1983  
5 which provide protections against discrimination, harassment, retaliation and violation of  
6 constitutionally protected rights.

7 16. At all times material, Coolidge was the employer of Ms. Dusek and required  
8 to comply with the terms, conditions and protections of the ADA, Title VII and 42 U.S.C.  
9 § 1983.

10 17. This Court has original jurisdiction over the federal statutory claims of Ms.  
11 Dusek.

12 18. Jurisdiction and venue are proper for this Court.

13 **FACTUAL BASIS FOR CLAIMS FOR RELIEF**

14 19. While working as a Coolidge PD patrol officer, Ms. Dusek performed the  
15 same duties and functions as the other similarly situated male officers. During her  
16 employment, Ms. Dusek and the other female Coolidge PD employees were subjected to  
17 inappropriate comments, frequent unwarranted criticism, differential treatment, gender  
18 discrimination and a generally hostile work environment based on their sex. This hostile  
19 work environment affecting the female officer and employees was well known and  
20 tolerated by the Coolidge PD chain of command and the management of the City  
21 government.

22 20. On or about February 2, 2020, Ms. Dusek and a fellow officer stopped two  
23 teenage subjects. After one subject was found to be in possession of a gun, Ms. Dusek  
24 attempted to search the other subject. A struggle ensued and Ms. Dusek sustained a  
25 serious on-the-job hand and wrist injury. The second subject was determined to have a  
26 loaded firearm concealed in his clothing.

27 21. After the teenage subject was taken into custody and transported to the  
28 station, Ms. Dusek was evaluated for a possible broken hand or wrist.

1       22. It was determined that Ms. Dusek had suffered a serious wrist and hand  
2 injury. This injury constituted a serious medical condition under the FMLA and a  
3 disability under the ADA that interfered with one or more of her major life activities  
4 including performing manual tasks and performing her work and patrol duties.

5       23. At various times following the February 2, 2020 incident, Ms. Dusek  
6 engaged in acts of protected activities such as exercising her rights under the Family and  
7 Medical Leave Act (FMLA) to take protected leave to care for her serious medical  
8 condition and requesting a reasonable accommodation under the ADA for a light duty  
9 assignment.

10       24. Due to her wrist injury and serious medical condition, Ms. Dusek submitted  
11 FMLA paperwork to Coolidge on or about February 13, 2020 and was granted approved  
12 FMLA leave.

13       25. On or about March 16, 2020, an orthopedic hand specialist determined that  
14 Ms. Dusek needed to undergo surgery on her wrist and the ulna bone in her forearm.  
15 Unfortunately, this surgery was delayed for approximately three months due to the start  
16 of the 2020 COVID pandemic.

17       26. Ms. Dusek underwent counseling to deal with stress, anxiety and symptoms  
18 of PTSD related to her life-threatening altercation with the armed teenager. Later, these  
19 counseling sessions evolved to include the emotional distress caused by her treatment at  
20 work as described herein and subsequent involuntary termination on or about September  
21 9, 2020.

22       27. While waiting for her initial surgery, Ms. Dusek returned to work on light  
23 duty status on or about March 19, 2020. This light duty assignment allowed Ms. Dusek  
24 the reasonable accommodation of performing needed administrative tasks in support of  
25 Coolidge PD.

26       28. On May 20, 2020, Ms. Dusek finally underwent ulnar shortening osteotomy  
27 surgery with metal plate and screw fixation of her wrist to stabilize the joint and promote  
28 healing.

1       29. During a June 8, 2020 follow-up medical appointment, it was determined  
2 that the orthopedic hardware used in her surgery was faulty. Ms. Dusek underwent a  
3 second surgery on June 11, 2020 to replace the faulty hardware and perform a donor bone  
4 graph.

5       30. On June 16, 2020, Ms. Dusek received a letter from Coolidge City Clerk,  
6 Norma Ortiz, informing her that her 12 weeks of approved FMLA leave would run out  
7 on June 22, 2020.

8       31. The letter outlined three options available to Ms. Dusek: return to work by  
9 June 22, 2020 with a “full release” from her doctor; apply for administrative leave based  
10 on her medical condition; or resign. Ms. Dusek informed the City that she anticipated that  
11 her doctor would release her to return to a light duty assignment after a medical  
12 appointment on July 2, 2020.

13       32. Coolidge placed Ms. Dusek on paid administrative leave and indicated it  
14 would review her employment status after her next doctor’s visit.

15       33. On July 13, 2020, Ms. Dusek returned to work on a 90-day light duty  
16 assignment.

17       34. After returning to work, based on her disability and need for a reasonable  
18 accommodation, Ms. Dusek was made to feel unwelcomed, ostracized from her peers,  
19 removed from the common work area, and subjected to an ongoing pressure campaign  
20 pushing her to return to full-time, “full release” duty status.

21       35. In contrast, a similarly situated male patrol officer was not subjected to such  
22 negative treatment while on medical leave and light duty status.

23       36. Officers on light duty assignments, such as Ms. Dusek, are not required to  
24 comply with the official dress code that applied to on-duty officers. While on light duty  
25 status, Ms. Dusek was given an unfounded day book entry write-up by Sgt. Williams for  
26 an alleged dress code violation. While the write-up was later rescinded as unfounded, this  
27 day book entry was discriminatory in nature and improperly given Ms. Dusek based on  
28 her gender and disability.

1       37. On August 11, 2020, Ms. Dusek sent a letter to Coolidge City Manager,  
2 Rick Miller, requesting a second 90 day light duty work assignment.

3       38. On August 12, 2020, Ms. Dusek was informed by Coolidge Police Chief  
4 Grizzle that City Manager Miller had already determined that he was “80-90% certain”  
5 that he would not extend Ms. Dusek’s light duty assignment.

6       39. Without inquiring into the medical prognosis of Ms. Dusek or the  
7 anticipated date she could return to full duty, City Manager Miller informed Ms. Dusek  
8 in a letter dated August 14, 2020 that her request for a 90 day extension of her light duty  
9 assignment was denied as it was not in the best interests of the City. The letter went on to  
10 state that Ms. Dusek needed to inform the Department whether she would be able to return  
11 to work with a “full release” on or before August 20, 2020. The letter did not specifically  
12 ask for an anticipated date of her return to work.

13       40. The letter from City Manager Miller also failed to mention potential options  
14 such as extended medical leave under Section 4-8-2 Administrative Leave for Medical  
15 Purposes in the City of Coolidge Personnel Policies and Procedures Handbook. This  
16 policy states it is intended to provide a medical leave option to those employees “who  
17 have exhausted the FMLA leave period.”

18       41. Ms. Dusek provided Coolidge with a letter from her doctor that indicated  
19 she was receiving ongoing medical treatment for her wrist injury and was not ready to  
20 return to unrestricted work duties at this time.

21       42. On August 24, 2020, Ms. Dusek received a Notice of Intent to take  
22 Disciplinary Action (“Notice of Disciplinary Action”) that stated, “Cause for Disciplinary  
23 Action: Expiration of Approved Leave” and “Proposed Action to be taken: Termination.”  
24 The notice references “the current diminished staffing levels of the Coolidge Police  
25 Department” as the rationale for why the “City of Coolidge cannot leave the position  
26 vacant any longer.” At this time, Coolidge PD had several other open positions that could  
27 have been filled to increase staffing levels without terminating Ms. Dusek.

1       43. Despite not having requested an anticipated date of return to work, the  
2 Notice of Disciplinary Action claimed City Manager Miller denied the request for light  
3 duty extension due to lack of an anticipated return date. The Notice of Disciplinary Action  
4 finishes by stating, “the City of Coolidge **must** terminate your employment with the City  
5 of Coolidge.” [Emphasis added.]

6       44. Despite the clear intent to terminate the employment of Ms. Dusek, she was  
7 informed that she could “provide your response and give cause why your termination  
8 should not occur” by providing a written response to Chief Grizzle by August 26, 2020  
9 on or before 17:00 hours (5 p.m.).

10       45. That same day, August 24, 2020, Ms. Dusek was presented with a  
11 memorandum from Chief Grizzle that informed her she was being placed on [non-  
12 medical] administrative leave with pay “until further notice” and directed to remain at her  
13 home during her assigned shift through “the conclusion of your time to respond to the  
14 ‘Notice of intent to terminate your employment[.]’” On information and belief, Chief  
15 Grizzle used this wording “intent to terminate” because he knew the decision to terminate  
16 the employment of Ms. Dusek had already been made and her August 26, 2020 response  
17 was irrelevant and futile.

18       46. Ms. Dusek submitted a response to Chief Grizzle on August 26, 2020. The  
19 response discussed her need to recover from an on-the-job injury and the City’s  
20 documented history of providing time for proper recovery and rehabilitation to other  
21 injured officers. Ms. Dusek added she had an appointment with her doctor on August 31,  
22 2020 and anticipated this would allow her to provide a timeframe for her return to full  
23 duties.

24       47. On or about August 28, 2020, Ms. Dusek received an email from the City  
25 HR Department with a blank Medical Inquiry Form in Response to an Accommodation  
26 Request (“Accommodation Request Form”). Ms. Dusek sent the Accommodation  
27 Request Form to her orthopedic hand specialist who indicated Ms. Dusek had a physical  
28 impairment that limited a major life activity. The doctor wrote in the space for

1 “suggestions regarding possible accommodations to improve job performance, including  
2 a leave of absence” that “if desk work is unavailable then LOA [leave of absence] to  
3 recover from surgery and allow bone to heal.” While the anticipated duration of the  
4 impairment was “unclear,” it was “> 3 months,” i.e., greater than 3 months. The form  
5 went on to state that the Ms. Dusek was “very anxious & stressed regarding uncertainty  
6 [with] her position & career and employment status.”

7 48. The completed Accommodation Request Form was returned to the City HR  
8 Department on or about September 4, 2020.

9 49. Despite receiving a formal request for a reasonable accommodation, the  
10 City never engaged in the interactive process with Ms. Dusek to explore accommodation  
11 and assignment options. The failure to engage in the interactive process violated the ADA.

12 50. Potential reasonable accommodations would have included such things as  
13 approving the request for another 90 day light duty assignment or informing Ms. Dusek  
14 of the option of taking administrative leave due to a medical condition pursuant to Section  
15 4-8-2 Administrative Leave for Medical Purposes in the City of Coolidge Personnel  
16 Policies and Procedures Handbook.

17 51. Having provided her response to Coolidge PD and unsure of her status, Ms.  
18 Dusek returned to work at the office on September 8, 2020.

19 52. On September 9, 2020, a Notice of Termination signed by City Manager  
20 Miller was hand delivered to Ms. Dusek. The notice informed Ms. Dusek that her  
21 employment was terminated effective immediately.

22 53. The Notice of Termination claimed the City was concerned about “staffing  
23 shortages due to a number of factors including, resignations, retirements, extended  
24 medical leave and much needed vacation requests to name a few.” The Notice of  
25 Termination did not address how the termination of Ms. Dusek would alleviate, and not  
26 exacerbate, existing staffing issues involving multiple existing open positions.

27 54. The City, its management, Coolidge HR and the Notice of Termination  
28 failed to inform Ms. Dusek of her post termination due process rights including the fact

1 that Ms. Dusek had ten business days to appeal her termination to the City's Personnel  
2 Advisory Board.

3       55. Another violation of Ms. Dusek's due process rights and Coolidge  
4 personnel policies and procedures involved the failure to provide Ms. Dusek with a  
5 legitimate pre-action meeting, also known as a *Loudermill* hearing, giving her the  
6 opportunity to respond to the allegations prior to any discipline or termination.

7       56. The August 24, 2020 invitation to provide a response and give cause for  
8 why the termination should not occur was clearly pretextual. The decision to terminate  
9 the employment of Ms. Dusek had already been made prior to her opportunity to respond.

10       57. The Notice of Intent to Discipline stated the City "must" terminate the  
11 employment of Ms. Dusek. Also, the August 24, 2020 memorandum from Chief Grizzle  
12 informing Ms. Dusek that she was being placed on administrative leave described the  
13 notice provided to Ms. Dusek that same day as a "Notice of intent to terminate." Finally,  
14 despite several references to "current diminished staffing levels" and "staffing shortages,"  
15 the City decided to terminate the employment of Ms. Dusek instead of hiring to fill  
16 multiple open positions.

17       58. The decision to terminate Ms. Dusek was made on or before August 24,  
18 2020, i.e., two days before the deadline for Ms. Dusek to provide her response to the  
19 Notice of Intent to Discipline. The Personnel Action Form signed by City Manager Miller  
20 on August 24, 2020 indicated approval of the termination of the employment of Ms.  
21 Dusek effective September 9, 2020. City Manager Miller is the final decision maker as it  
22 was his signature on the Notice of Termination.

23       59. At no point during the events outlined herein, did the City, its management,  
24 or Coolidge HR explore other viable options for Ms. Dusek such as disability retirement,  
25 additional administrative leave, medical leave, alternative work assignments, approving  
26 a second 90-day light duty assignment or other provisions available under the policies  
27 and procedures of the City.

60. The treatment of Ms. Dusek stands in stark contrast to the City's treatment of a similarly situated male patrol officer who was allowed to remain on a combination of medical leave and light duty for 10 months, approximately 300 days, before returning to full duty in May 2020. By contrast, Ms. Dusek was only given a combination of about seven months of medical leave and light duty status before she was fired.

61. In a further example of preferential treatment, this male officer was allowed to remain stationed in the main patrol area of headquarters while on light duty where he could be seen playing video games on his phone. He was given preferential treatment despite a medical condition that many patrol officers expressed skepticism about. This stands in sharp contrast to the circumstances of Ms. Dusek who sustained a serious on-the-job injury while protecting the public and then terminated after only one light duty assignment and never approved for a second 90-day light duty assignment, placed on administrative leave for medical purposes or given the opportunity to explore the option for a disability retirement.

62. As the direct and proximate result of Defendants' actions, Ms. Dusek suffered severe emotional distress, nervous breakdown, fear, anxiety, humiliation, social isolation, and insomnia to such an extent that she suffered mental and physical harm.

63. As a result of the termination of her employment, Ms. Dusek has suffered significant economic harm through lost past and future income, lost benefits and reduced retirement benefits.

## COUNT I - ADA

64. All previous paragraphs of this Complaint are realleged as if set forth more fully herein.

65. The ADA prohibits employment related discrimination, a hostile work environment and retaliation.

66. Ms. Dusek had a recognized disability that interfered with one or more of her major life activities including performing manual tasks and her work and patrol duties.

1       67. Due to her disability, Ms. Dusek requested leave, light duty, and a  
2 reasonable accommodation.

3       68. Despite receiving a formal request for a reasonable accommodation, the  
4 City failed to engage in the interactive process, failed to provide a reasonable  
5 accommodation and shortly thereafter terminated Ms. Dusek.

6       69. The events and actions described herein violated the ADA by illegal  
7 discrimination, a hostile work environment, retaliation and termination due to the  
8 recognized disability of Ms. Dusek.

9       70. The effect of these unlawful employment practices has been to classify,  
10 limit, and discriminate against Ms. Dusek in a manner that deprived her of employment  
11 opportunities and adversely affected her status as an employee due to her disability.

12       71. As a result of the illegal actions of the City, Ms. Dusek has been and will  
13 continue to be deprived of income in the form of past, present, and future wages,  
14 prospective retirement benefits, seniority, insurance coverage, and other monetary and  
15 non-monetary benefits.

16       72. The actions of the City and its employees and agents were committed  
17 maliciously and with a reckless indifference to the economic harm, pain and suffering,  
18 and emotion distress it caused Ms. Dusek allowing her to recover all damages permitted  
19 under law in an amount to be proven at trial.

20       73. Ms. Dusek is entitled to back pay, reinstatement or front pay, compensatory  
21 damages and her reasonable attorneys' fees and costs.

## 22                   **COUNT II – Title VII**

23       74. All previous paragraphs of this Complaint are realleged as if set forth more  
24 fully herein.

25       75. Title VII prohibits employment related discrimination and a hostile work  
26 environment due to sex.

27       76. As described herein, Ms. Dusek was subjected to sex discrimination and a  
28 hostile work environment due to her sex.

77. The City discriminated against Ms. Dusek on the basis of her sex, female, in violation Title VII by engaging in, tolerating, or failing to prevent sex discrimination and a hostile work environment.

78. Upon information and belief, members of City management and Coolidge PD chain of command were aware of or should have known of the acts of sexual discrimination and hostile work environment directed at Ms. Dusek but did nothing to stop the illegal discrimination or alleviate her hostile work environment.

79. The effect of this unlawful sex discrimination has been to classify, limit, and discriminate against Ms. Dusek in a way that jeopardizes and tends to deprive her of employment opportunities and negatively impacted her employment status because of her gender in violation of Title VII of the Civil Rights Act of 1964, as amended.

80. As a victim of the unlawful discrimination and employment practices described herein, Ms. Dusek has suffered humiliation, degradation, and emotional distress due to her sex. Ms. Dusek has also lost income in the form of past, present, and future wages, medical insurance, benefits, and reduced retirement benefits.

81. Ms. Dusek is entitled to recover all relief as authorized under Title VII including her economic loss in an amount to be proved at trial and her reasonable attorneys' fees and costs.

**COUNT III - 42 U.S.C. § 1983**

82. All previous paragraphs of this Complaint are realleged as if set forth more fully herein.

83. Federal statute 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

1           84. As described herein, the City of Coolidge acted under the color of state law  
2 to deprive Ms. Dusek of her constitutional protected due process rights.

3           85. As described herein, Ms. Dusek has been deprived of her property interest  
4 in her job without due process in violation of the Fourteenth Amendment of the  
5 Constitution of the United States.

6           86. As described herein, the actions of the City, such as the flawed disciplinary  
7 process, the lack of a legitimate pre-termination hearing, actions designed to deprive Ms.  
8 Dusek of the opportunity for post termination due process, and wrongful termination,  
9 constitute violations of the procedural due process provisions of the Fourteenth  
10 Amendment of the Constitution of the United States.

11          87. Ms. Dusek has suffered humiliation and degradation, pain and suffering and  
12 economic loss due to Defendant's unconstitutional practices.

13          88. As described herein, the actions of the City violated the due process rights  
14 of Ms. Dusek and she is entitled to all rights, remedies, in law or in equity, available to  
15 her under 42 U.S.C. § 1983.

16          89. Ms. Dusek is also entitled to recover her reasonable attorneys' fees and  
17 costs.

18          **WHEREFORE**, Ms. Dusek respectfully requests judgment in her favor and  
19 against the City and that the Court declare as follows:

- 20           A. That the employment practices and actions described herein are unlawful and  
21 violate the ADA, Title VII and 42 U.S.C. § 1983;
- 22           B. Award Ms. Dusek any and all relief and recovery available to her under the ADA,  
23 Title VII and 42 U.S.C. § 1983;
- 24           C. Award all lost past and future income, lost benefits, diminished retirement  
25 benefits, medical bills, and all other economic damages in an amount to be  
26 determined at trial;

- 1       D. Award all compensatory damages to which Ms. Dusek is entitled including but not
- 2                limited to, pain and suffering, mental anguish, loss of earning capacity in an
- 3                amount to be proven at trial;
- 4        E. Award Ms. Dusek all non-monetary relief available to her under the ADA, Title
- 5                VII or other statute, including prospective injunctive and equitable relief. This
- 6                would include, but not be limited to, reinstatement, future employment benefits,
- 7                enforcement and ongoing compliance with the provisions of the ADA and Title
- 8                VII and her reasonable attorneys' fees and costs;
- 9        F. Award prejudgment interest from the date each claim for damages was liquidated;
- 10      G. Award interest on all sums awarded in judgment at the highest legal rate allowable
- 11                from the date of judgment until paid;
- 12      H. That this Court retain jurisdiction over this action to ensure full compliance with
- 13                the Court's orders and require the City file such reports as the Court deems
- 14                necessary to evaluate such compliance; and
- 15      I. For such other and further relief as this Court deems just and proper under the
- 16                circumstances.

17                **DATED** this 18<sup>th</sup> day of January, 2022.

18                **JACKSON WHITE**

19                s/ Michael R. Pruitt  
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